

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CARY LEE PETERSON,

Petitioner.

Case No. 23-cv-01022 BLF (PR)

**ORDER GRANTING MOTION FOR
VOLUNTARY DISMISSAL;
GRANTING REQUEST FOR
REFUND OF FILING FEE**

(Docket No. 8)

On March 7, 2023, Petitioner, a federal prisoner proceeding *pro se*, filed an “emergency” habeas corpus petition and motion for rehearing. Dkt. No. 1. On March 15, 2023, in response to the Clerk’s notice, Petitioner paid the \$402 filing fee. Dkt. No. 5.

On April 7, 2023, Petitioner filed a motion for voluntary dismissal. Dkt. No. 8 at 2. Good cause appearing, the motion for voluntary dismissal of this matter as moot is **GRANTED.**

Petitioner also requests “as a one time courtesy” that the Court refund the court fee paid in whole or part. *Id.* at 3. The Court notes that his filing should have been construed as a petition for writ of habeas corpus under 28 U.S.C. § 2255, which is not subject to filing fees. Accordingly, the Court’s financial office is directed to refund the filing fee to Petitioner.

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CONCLUSION

For the foregoing reasons, Petitioner's request for voluntary dismissal is **GRANTED**. Dkt. No. 8. The petition is **DISMISSED** without prejudice.

The Clerk shall send a copy of this order to the Court's financial office to process Petitioner's refund.

This order terminates Docket No. 8.

IT IS SO ORDERED.

Dated: April 14, 2023


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California